

## § 40.169

(d) In transmitting test results, you or the C/TPA and the employer must ensure the security of the transmission and limit access to any transmission, storage, or retrieval systems.

(e) MRO reports are not subject to modification or change by anyone other than the MRO, as provided in § 40.149(c).

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41953, Aug. 9, 2001]

### **§ 40.169 Where is other information concerning the role of MROs and the verification process found in this regulation?**

You can find more information concerning the role of MROs in several sections of this part:

§ 40.3—Definition.

§§ 40.47–40.49—Correction of form and kit errors.

§ 40.67—Role in direct observation and other atypical test situations.

§ 40.83—Laboratory handling of fatal and correctable flaws.

§ 40.97—Laboratory handling of test results and quantitative values.

§ 40.99—Authorization of longer laboratory retention of specimens.

§ 40.101—Relationship with laboratories; avoidance of conflicts of interest.

§ 40.105—Notification of discrepancies in blind specimen results.

§ 40.171—Request for test of split specimen.

§ 40.187—Action concerning split specimen test results.

§ 40.193—Role in “shy bladder” situations.

§ 40.195—Role in cancelling tests.

§§ 40.199–40.203—Documenting errors in tests.

§ 40.327—Confidentiality and release of information.

§ 40.347—Transfer of records.

§ 40.353—Relationships with service agents.

## **Subpart H—Split Specimen Tests**

### **§ 40.171 How does an employee request a test of a split specimen?**

(a) As an employee, when the MRO has notified you that you have a verified positive drug test or refusal to test because of adulteration or substitution, you have 72 hours from the time of notification to request a test of the split specimen. The request may be verbal or in writing. If you make this request to the MRO within 72 hours, you trigger the requirements of this section for a test of the split specimen.

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(b)(1) If, as an employee, you have not requested a test of the split specimen within 72 hours, you may present to the MRO information documenting that serious injury, illness, lack of actual notice of the verified test result, inability to contact the MRO (*e.g.*, there was no one in the MRO’s office and the answering machine was not working), or other circumstances unavoidably prevented you from making a timely request.

(2) As the MRO, if you conclude from the employee’s information that there was a legitimate reason for the employee’s failure to contact you within 72 hours, you must direct that the test of the split specimen take place, just as you would when there is a timely request.

(c) When the employee makes a timely request for a test of the split specimen under paragraphs (a) and (b) of this section, you must, as the MRO, immediately provide written notice to the laboratory that tested the primary specimen, directing the laboratory to forward the split specimen to a second HHS-certified laboratory. You must also document the date and time of the employee’s request.

### **§ 40.173 Who is responsible for paying for the test of a split specimen?**

(a) As the employer, you are responsible for making sure (*e.g.*, by establishing appropriate accounts with laboratories for testing split specimens) that the MRO, first laboratory, and second laboratory perform the functions noted in §§ 40.175–40.185 in a timely manner, once the employee has made a timely request for a test of the split specimen.

(b) As the employer, you must not condition your compliance with these requirements on the employee’s direct payment to the MRO or laboratory or the employee’s agreement to reimburse you for the costs of testing. For example, if you ask the employee to pay for some or all of the cost of testing the split specimen, and the employee is unwilling or unable to do so, you must ensure that the test takes place in a timely manner, even though this means that you pay for it.

(c) As the employer, you may seek payment or reimbursement of all or